

A RESOLUTION

01- R-1925

BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ATLANTA, THE GEORGIA DEPARTMENT OF TRANSPORTATION AND NORFOLK SOUTHERN RAILWAY COMPANY RELATED TO THE CONSTRUCTION AND MAINTENANCE OF TEMPORARY STATE ROUTE 1019 AT THE NORFOLK SOUTHERN BRIDGE PROJECT NH-0001-00(297), P.I. NO. 0001297 STATE ROUTE 3/U.S. ROUTE 41 (NORTHSIDE DRIVE) AT BISHOP STREET AND STATE ROUTE 9/U.S. ROUTE 19 (WEST PEACHTREE STREET) AT 17th STREET; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta desires a new bridge to be constructed over Norfolk Southern's tracks in conjunction with the Atlantic Station, LLC development project, and wishes to add to the State Highway System a section of projected alignment, to be temporarily designated as State Route 1019, beginning at its point of junction with State Route 3/U.S. Route 41 (Northside Drive) at Bishop Street and extending easterly along projected alignment to its point of junction with State Route 9/U.S. Route 19 (West Peachtree Street) at 17th Street; and

WHEREAS, the Georgia Department of Transportation is planning to construct the Norfolk Southern Street Bridge Project in the City of Atlanta under project numbered NH-0001-00(297), P.I. NO. 0001297; and

WHEREAS, the City of Atlanta, in coordination with the Georgia Department of Transportation, and Norfolk Southern, has reviewed and is in agreement with the projects and plans for the bridge; and

WHEREAS, the City of Atlanta has been requested to assume maintenance of said bridge.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

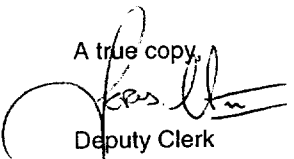
Section 1: That the Mayor be and is hereby authorized to enter into an appropriate contract with the Georgia Department of Transportation and the Norfolk Southern Railway Company for maintenance of the Norfolk Southern bridge as part of State Route 1019, beginning at its point of junction with State Route 3/U.S. Route 41 (Northside Drive) at Bishop Street and extending easterly along projected alignment to its point of junction with State Route 9/U.S. Route 19 (West Peachtree Street) at 17th Street.

Section 2: That the City Attorney be and is hereby directed to prepare an appropriate contractual agreement in cooperation with the Department of Planning, Development and Neighborhood Conservation and the Department of Public Works, for execution by the Mayor, to be approved by the City Attorney as to form.

Section 3: That this agreement shall not become binding on the City and the City shall incur no liability upon same until such agreement has been executed by the Mayor and delivered the Georgia Department of Transportation and countersigned by the Party.

LPGANORFOLK

A true copy,


Deputy Clerk

ADOPTED by the Council
APPROVED by the Mayor

DEC 03, 2001
DEC 11, 2001

AGREEMENT

Project: NH-0001-00 (297) Fulton County
PI No. 0001297

THIS AGREEMENT, made and entered into _____, by and between,

DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia, hereinafter styled the DEPARTMENT, party of the first part; and

NORFOLK SOUTHERN RAILWAY COMPANY, a corporation, chartered in the State of Virginia, hereinafter styled the RAILROAD, party of the second part.

CITY OF ATLANTA, a political subdivision of the State of Georgia, hereinafter styled the CITY, party of the third part.

WITNESSETH that:

WHEREAS, the DEPARTMENT proposes under the above written project number the construction of the existing 17th Street extension from West Peachtree Street (SR 9) in Midtown Atlanta west over I-75 and I-85 to connect with Northside Drive (US 41 / SR 3); and

WHEREAS, the DEPARTMENT proposes under the above written project number to construct a new bridge on new location over the tracks of Norfolk Southern Railway Company at railroad milepost 634.22 in the City of Atlanta, Fulton County, Georgia; and

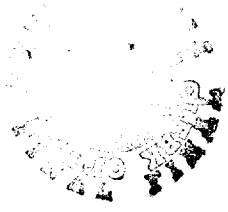
WHEREAS, the CITY will maintain said bridge over the RAILROAD at railroad milepost 634.22; and

WHEREAS, the CITY is in agreement with the project and plans; and

WHEREAS, said construction will require the RAILROAD to perform preliminary and construction engineering, accounting and signal and electrical changes which the RAILROAD is willing to perform in accordance with the estimate attached hereto; and

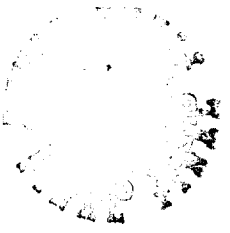
WHEREAS, the RAILROAD is in agreement with the project and plans and willing to grant the DEPARTMENT and CITY the easement for the project.

NOW THEREFORE, the PARTIES HERETO, each in consideration of the premises above and of the covenants of the other as hereinafter expressed and contained, do hereby contract and agree each with the other as follows:

- 
1. It is specifically understood that the project number shown above is for the DEPARTMENT's identification purposes only and may be subject to change by the DEPARTMENT. In the event it becomes necessary for the DEPARTMENT to assign a different project number, the DEPARTMENT will notify the RAILROAD and CITY of the new project designation. Such change in project designation shall have no effect whatsoever on any other terms of this agreement.
 2. (a) It is agreed that the regulatory provisions of Part 140, Subpart I, and Part 646, Subpart B, of Title 23, Highways, of the Code of Federal Regulations, current edition, (hereinafter referred to as CFR) shall govern the work and procedures covered by this agreement and are by reference incorporated herein.

(b) The RAILROAD shall furnish the necessary materials and perform the work on an actual cost basis. All materials, which are required to complete the work, will be purchased direct by the RAILROAD or furnished from RAILROAD stock in accordance with Part 140, Subpart I, of CFR. Any portion of the work contemplated under this agreement may be let to contract by the RAILROAD through competitive bidding or the RAILROAD may use the services of a contractor which works for the RAILROAD on a routine basis under a written continuing contract subject to the terms and conditions of the aforesaid CFR, and with prior review and approval by the DEPARTMENT, all in accord with the detailed estimate attached. Before the RAILROAD initiates accomplishment of any work by these means, the RAILROAD shall first contact the DEPARTMENT to determine the appropriate procedures to follow to provide for compliance. Prior approval by the DEPARTMENT will not be necessary when work is performed by pre-approved continuing contractors when the amount of work does not exceed \$5,000 per each individual contractor.

(c) RAILROAD shall give DEPARTMENT and Federal Highway Administration, when applicable, ample opportunity to inspect materials recovered by RAILROAD in accordance with Part 646, Subpart B, of CFR.
 3. RAILROAD to the extent that its present right, title and interest permits or enables it so to do and without warranty hereby grants to DEPARTMENT and the CITY an easement across its right-of-way for the purpose of the construction of said overpass and approaches thereto, all as shown on the project plans and in accord with the specifications and special provisions. Said project plans, specifications and special provisions, which are identified by the project number shown above, as finally approved by the RAILROAD, CITY and DEPARTMENT, are hereby made a part hereof by reference. Said construction is more particularly described as shown on project plan sheets which are attached hereto and made a part hereof.

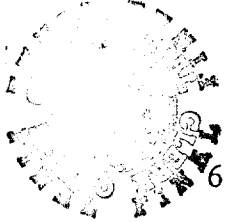



(a) Such easement hereby granted is limited to the use for highway purposes of space required for approaches to said bridge and for columns, foundations and other parts of the bridge and is limited vertically by a horizontal surface 20 feet above the roadway surface of said bridge and approaches, together with the use of additional space for aforesaid purpose and for access to the highway facilities for maintenance purposes, it being understood that the easement shall not restrict the RAILROAD from utilizing the air space under said bridge for railroad operations and for wire lines or other facilities which will not encroach on the reasonable requirements for maintaining the highway facilities. All other rights are reserved unto the RAILROAD.

(b) DEPARTMENT and CITY, in its maintenance of the highway facilities, agrees to obtain permission from the RAILROAD before undertaking any work which may interfere with or be a real or potential hazard to passage of trains or other railroad operations.

(c) RAILROAD agrees to notify DEPARTMENT and CITY prior to undertaking the use of air space over the easement and prior to starting the construction of any fixed installation, other than its customary signal and communication facilities, within 8 feet of the underside of said bridge or within 15 feet of said easement, it being understood that such use will afford reasonable protection and safety to the highway facilities and highway traffic and will not unreasonably interfere with lighting, ventilation and maintenance of the highway facilities by the DEPARTMENT and CITY.

4. DEPARTMENT will construct and CITY will maintain said overpass bridge together with approaches thereto in accordance with the plans, specifications and special provisions which are identified by the project number shown above, approved by all parties, and made a part of this agreement by reference. DEPARTMENT further agrees that said work shall be done and performed in accordance with the reasonable requirements of RAILROAD in such manner as to prevent interruption of, interference with or danger or delay to railroad operations.
5. The RAILROAD, with its regular construction or maintenance forces and personnel and at its standard schedule of wages and working hours and working in accordance with the terms of its agreements with such employees, will do and perform the work as described in the detailed estimate dated February 8, 2001 for \$49,000.00, prepared in accord with aforesaid CFR, said estimate being attached hereto and made a part of this agreement. Any work to be done and performed by the RAILROAD not to be done and performed by the regular organized forces of the RAILROAD working under current agreements with its employees, shall be subject to the labor regulations applicable to construction contracts for grade separation projects.

- 
6. RAILROAD may submit periodic progress bills to DEPARTMENT not more than once monthly for the eligible cost and expense of work done and performed by RAILROAD. Progress bills shall be itemized as to labor, equipment, materials, etc., and the dates incurred. Errors appearing on such bills shall not be cause for withholding the entire payment, but shall be corrected and the adjusted amount shall be paid. The DEPARTMENT will pay in full all verified charges on progress bills promptly upon receipt and verification thereof by the DEPARTMENT.
 7. Upon completion of the work the RAILROAD shall submit a final bill to the DEPARTMENT, said bill to be prepared in accordance with the provisions of aforesaid CFR, and the DEPARTMENT shall make a conditional final payment promptly upon verification of the final bill by the DEPARTMENT. The total liability of the DEPARTMENT shall not exceed the total cost of the work as ascertained by computing the items of cost as set forth in the aforesaid CFR. At any time within three years after the date of the conditional final payment the DEPARTMENT may audit the cost records and accounts of the RAILROAD pertaining to this project and bill the RAILROAD the amount of any unallowable expenditure made in the conditional final payment of this contract or, if no unallowable expenditure is found, notify the RAILROAD of that fact in writing. Such payment shall not constitute acceptance by the RAILROAD of the audit findings and disallowances. For audit purposes, the cost records and accounts of the RAILROAD pertaining to this project shall be made available to the representatives of the DEPARTMENT or the Federal Highway Administration, when applicable, at the General Office of the RAILROAD during the progress of the work and for a period of not less than three (3) years from the date conditional final payment has been received by the RAILROAD.
 8. The DEPARTMENT shall not be liable for payment of any bill received more than 12 months after all work on this project is completed and the project is accepted by the RAILROAD and DEPARTMENT unless the RAILROAD has requested an extension of the billing period in writing.
 9. DEPARTMENT will not be bound to pay any amount in excess of the detailed cost estimate attached hereto, nor for any items of work not provided for in the detailed cost estimate. In the event it is determined that a substantial change in the work to be performed by RAILROAD will be required or that an abnormal increase in the cost anticipated will be incurred by RAILROAD, a written change or extra work order approved by DEPARTMENT will be required as provided in the aforesaid CFR. The amount of the detailed cost estimate attached hereto will be allotted from available funds and written notice given to RAILROAD by DEPARTMENT before RAILROAD is authorized to proceed with the work to be performed by RAILROAD under this agreement.

- 
10. The DEPARTMENT will require its Contractor to abide by the attached Special Provision for Protection of Railway Interests which will be included in his contract and, before commencing said construction on RAILROAD right-of-way or property, to furnish evidence acceptable to the DEPARTMENT and the RAILROAD that the Contractor has provided (1) Contractor's Public Liability and Property Damage Liability Insurance, (2) Contractor's Protective Public Liability and Property Damage Liability Insurance and (3) Railroad Protective Liability Insurance in the amounts specified in the Special Provision attached hereto and made a part hereof, all in accord with Part 646, Subpart A, of CFR, current edition, and in a form approved by the DEPARTMENT and the RAILROAD.
 11. The DEPARTMENT agrees that it will secure the payment bond required under Section 13-10-1 (b) (2) (A) of the Official Code of Georgia Annotated and that such bond will cover the work to be done and for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the contract. The DEPARTMENT will furnish the RAILROAD a photocopy of the bond secured for the project. The DEPARTMENT will also furnish the RAILROAD with the address of all contractors and sureties that may be a party to the bond and will notify the RAILROAD of any subsequent address changes.
 12. It shall be the RAILROAD'S responsibility to plan with the Contractor a schedule of operations which will clearly set forth at which stage of the contractor's operations the RAILROAD will be required to perform its work.
 13. In the event it shall be necessary in connection with or incident to the work of said construction to make any adjustment in facilities of tenants of the RAILROAD, such adjustments shall be handled by the DEPARTMENT directly with the owner or owners thereof at no expense to the RAILROAD.
 14. It is agreed that the DEPARTMENT will furnish the RAILROAD the name, address and telephone number of its representative who will be in charge of the work as part of its letter of authorization to proceed with the work covered under this agreement. The RAILROAD agrees to give said representative reasonable prior notice of the dates upon which work will be done in order that work may be properly inspected and documented for audit.
 15. It is mutually agreed between the parties hereto that this document shall be deemed to have been executed in the City of Atlanta, Georgia, and that all questions of interpretation and construction shall be governed by the laws of the State of Georgia.
 16. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.
-



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative the day and date herein above written.

WITNESSES AS TO RAILROAD:

NORFOLK SOUTHERN RAILWAY COMPANY

WITNESS

BY: _____

NOTARY PUBLIC

AS ITS _____

(CORPORATE SEAL)

I attest to the genuineness of the Corporate Seal, and I further attest that the above named officer is duly authorized to execute this document.

ATTEST:

BY: _____

AS ITS _____

WITNESSES AS TO THE CITY

CITY OF ATLANTA

WITNESS

BY: _____
CHAIRMAN

NOTARY PUBLIC

Signed on behalf of the City pursuant to Resolution dated _____.

Approved as to Form:

ATTEST:

ATTORNEY

BY: _____
CLERK

This _____ day of _____, 20____.



(CONTINUED)

RECOMMENDED:

ACCEPTED:

DEPARTMENT OF TRANSPORTATION

STATE UTILITIES ENGINEER

BY: _____
DEPUTY COMMISSIONER

Signed, sealed, and delivered this _____
day of _____ 20_____,
in the presence of:

WITNESS

NOTARY PUBLIC

(OFFICIAL SEAL OF THE DEPARTMENT)

I attest that the seal imprinted herein is the Official Seal of the Department.

BY: _____
TREASURER
OFFICIAL CUSTODIAN OF THE SEAL

Project: NH-0001-00 (297), PI No. 0001297, Fulton County
Date: March 29, 2001

RCS# 3360
12/03/01
9:44 PM

Atlanta City Council

Regular Session

01-R-1925 Agreement with GA DOT & Norfolk Southern
Railway Company for construction
ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 0

Y McCarty	NV Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

01-R-1925

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL

FOR COPY OR TO VIEW

01-1925

(Do Not Write Above This Line)

A RESOLUTION

BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ATLANTA, THE GEORGIA DEPARTMENT OF TRANSPORTATION AND NORFOLK SOUTHERN RAILWAY COMPANY RELATED TO THE CONSTRUCTION AND MAINTENANCE OF TEMPORARY STATE ROUTE 1019 AT THE NORFOLK SOUTHERN BRIDGE PROJECT NH-0001-00(297), P.I. NO. 0001297 STATE ROUTE 3/U.S. ROUTE 41 (NORTHSIDE DRIVE) AT BISHOP STREET AND STATE ROUTE 9/U.S. ROUTE 19 (WEST PEACHTREE STREET) AT 17th STREET; AND FOR OTHER PURPOSES.

ADOPTED BY
DEC 03 2001

COUNCIL

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Committee

Date

Chair

Action

Fav, Adv, Held (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Held (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Held (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Held (see rev. side)

Other

Members

Refer To

COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☐ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

CERTIFIED
DEC 3 2001

ATLANTA CITY COUNCIL PRESIDENT

Robert A. Parker

CERTIFIED
DEC 03 2001

DEPUTY MUNICIPAL CLERK

MAYOR'S ACTION

DEC 11 2001

Kim C. Johnson